Submission No 113

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Mandala Asset Solutions

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15 May 2012

The Director
Joint Select Committee on the NSW Compensation Scheme
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sirs

SUBMISSION TO COMMITTEE

I refer to the Call for Submissions in relation to the Joint Select Committee on the NSW Workers Compensation Scheme and attach for your information our submission.

This submission is made together with Mr Chris Harrington of Inigma Group Pty and I attach his cover letter for your attention.

I would like to express my real concern over the way in which this process has been handled to date. There appears to have been preferential treatment provided to lobby and pressure groups. The announcement of public submissions allowed a timetable that was far too short for individuals to be expected to make a full and detailed submission. However, it appears that lobby groups have been on the 'inside' of this process, as displayed by the fact that the people called to provide verbal evidence are simply a parade of pressure groups almost all of whom have vested interests in the current system. Due to the timetable, they all appear to have been invited prior to the public being asked to give submissions.

There does not appear to be any representation from anyone who has detailed day to day experience of the operations of the Scheme. There are no individual employers who have to deal with Workers Compensation claims on a daily basis.

As a small/medium business, I do not feel that the business associations should be the sole representatives of our sector – most businesses my size do not belong to these associations which overwhelmingly represent big business. Chris Harrington and myself are offering a perspective based on operational experience which we feel needs to be heard in this debate.

I have been trying for some time, without success, to arrange a meeting with the responsible Minister (via my local MP) to brief him verbally on the variety of issues that we have encountered in dealing with Workcover NSW. I now further extend this request to be allowed to make a verbal submission to the Committee together with Mr Chris Harrington, a specialist in claims management with over 40 years of experience in the insurance industry and 15 years specialising in Workers Compensation matters in NSW.

I can be contacted on [redacted]. Please direct all post to [redacted]

Yours sincerely

Ryan Shaw
Principal
Mandala Asset Solutions Pty Ltd

SUBMISSION TO THE JOINT SELECT COMMITTEE ON THE NSW WORKERS COMPENSATION SCHEME

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1. BACKGROUND

1.1. Mandala Asset Solutions ('Mandala') is the property manager of a small group of motels and other accommodation assets located in NSW. We are also the managers of the ownership group, the Trinity Accommodation Master Trust.

1.2. We first commenced business in NSW in May 2010. We have since acquired properties in Orange, Mudgee, Moree and Lithgow.

1.3. Each property has a turnover of between $2m and $3.5m, making these small/medium businesses. They form a group for Workers Compensation purposes and do not qualify for the small business exemptions.

1.4. We employ around 100 staff across the group and have been responsible for investing around $8m in the NSW economy, much of the funding raised overseas.

1.5. In the two years since we started business, we have been defrauded to the extent of around $200,000 in additional premiums in relation to Workers Compensation claims in relation to staff who we never employed, and staff who were proved to be lying about the extent of their injuries.

1.6. We have attempted to refer our complaints and concerns to Workcover NSW. They have failed to respond to any correspondence and refused to investigate any of the matters that we have raised.

1.7. In January 2012, we engaged Mr Chris Harrington Principal, Inigma Group Pty Ltd to help us manage our claims. Mr Harrington is an

expert on the management of Workers Compensation claims in behalf of employers. He is a sole practitioner with over 40 years insurance industry experience and a very deep understanding of the procedures and problems with the Workers Compensation system.

1.8. Mr Harrington has agreed to jointly submit this paper to the Committee.

1.9. We have raised our concerns with our local MP, Ms Roza Sage, and requested a meeting with the Minister, Mr Greg Pearce, so that the issues can be properly communicated. There has been no response to any of these requests. We have been attempting to get our concerns aired since December 2011.

1.10. As a result of our experiences with the Workers Compensation system in NSW, we have cancelled our plans for the expansion of the business and intend to return un-invested funds to our investors.

1.11. We believe that it is essential that the views of small/medium business employers who have actually had to manage Workcover claims be at the forefront of any investigation of the NSW Workers Compensation Scheme. It is only with a detailed understanding of how these claims are actually handled, and the behaviour or Workcover NSW and the Scheme Agents, that any meaningful progress can be made.

2. SCOPE OF SUBMISSION

2.1. We consider that the time allowed for written submissions to this Committee is totally insufficient.

2.2. As a small business, we are not in a position to make lengthy written submissions about complex matters, especially in this timescale.

2.3. Having such a small amount of time simply encourages the well-resourced interest groups (who have no doubt been preparing submissions for some time) to dominate proceedings.

2.4. Therefore, we have decided to:

2.4.1. Make a brief summary submission outlining the key areas which we believe should be raised; and

2.4.2. Formally request that we be allowed to make a verbal submission to the Committee and answer questions about our own experiences with Workcover NSW and how these matters may be rectified.

3. RESPONSE TO THE ISSUES PAPER

3.1. I have reviewed the Issues Paper which has been produced in relation to this Inquiry.

3.2. The Issue Paper seems to focus largely on the problem that the Scheme has a large deficit and therefore the solution is to remove certain benefits from the Scheme and to limit other benefits to improve the financial position of the Scheme.

3.3. In particular, the Issues Paper seems to compare the NSW Scheme to other State Schemes, and concludes that by bringing the scope of the NSW Scheme in line with other states, a similar cost and financial outcome can be achieved.

3.4. In our view, this approach is certain to fail. If the outcome of this Inquiry is along the lines of the Issues Paper, there will be no material affect on the financial situation of the Scheme, nor any improvement in the fairness of the Scheme for employers and genuinely injured employees.

3.5. The NSW Government commissioned a financial review of the Scheme by PricewaterhouseCoopers which noted that the Scheme deficit had increased materially since the last election.

3.6. However, there have not been any material changes to the Scheme rules in this time. Therefore, this clearly suggests that the main issue is not with the scope of the Scheme, but instead with how it is actually administered.

3.7. However, the Issues Paper simply mentions this in passing, but focuses mostly on reducing the scope of the Scheme.

3.8. It appears that the NSW Government is being deliberately led into trouble as a result of its commendable attempts to address the financial implications of the Scheme and the deficit. By focussing on changes to the scope of the Scheme, the Government will eventually be open to attack by the Unions and the Workers Compensation 'industry'. Political pressure will probably ensure that the proposed changes are then 'watered down' and very little will be achieved.

3.9. It is our experience that, although changes to the scope of the Scheme are needed, the issue of the Scheme deficit could be solved without any changes to the scope of the Scheme at all. The fundamental problem is in the way the Scheme operates in practice and in particular the demonstrably biased and improper way in which Workcover NSW manipulates the rules of the Scheme to support at all times the ability of workers to make fraudulent claims, and to exaggerate injuries and delay the return to work whilst increasing claims costs.

3.10. The primary reason that costs of the NSW Workers Compensation claims are so high is the level of weekly benefits paid to employees who are categorised as unfit to work and the length of time that these benefits are paid. The main focus of any reform must be to ensure that employees return to work at the earliest possible moment. Despite this being the declared aim of the Scheme, in fact every possible barrier is placed in the way of employers who want to return employees to work.

3.11. In the joint experience of Mr Harrington and myself, it would be perfectly possible to at least half the claims costs of almost all Workers Compensation claims simply by insisting on fair, balanced procedures and ensuring that those who administer the process are actually competent and not acting in a consistently partisan fashion.

3.12. Given that Workcover NSW managed to massively increase its deficit immediately following the election of a Government to which most of their staff are ideologically opposed, there is no reasonable expectation that the same process will not be used to undermine the attempts of this Inquiry to reduce the scope of the Scheme to reduce the deficit.

3.13. The ONLY way in which Workers Compensation costs will be reduced in a material manner is to fully understand the day to day procedures, policies, rules and practices of Workcover NSW, Scheme Agents and medical professionals and ensure that these are reformed to ensure that the system is efficient, fair and balanced. The current Issues Paper does not seem to focus on this area.

3.14. Therefore, we have set out some of the issues in this submission. However, due to the time constraints only a small proportion of the subject matter can be addressed.

4. THE PURPOSE OF WORKERS COMPENSATION

4.1. We believe that it worth re-visiting the basis for a Workers Compensation system prior to any review.

4.2. It is widely stated that payments to workers for injuries at work is an 'entitlement'. This is not the case.

4.3. Under Common Law, an employer is NOT liable for workplace injuries unless they have been negligent in allowing the injury to occur. In many jurisdictions, this legal position is allowed to stand (eg UK).

4.4. However, there is a reasonable argument that requiring employees to have to prove negligence is costly and unfair due to the differing financial situations of an employee and employer. It also results in the welfare consequences of non-negligent injuries to be transferred to the State. From the employer point of view, defending negligence claims in Court is both time consuming and expensive.

4.5. Therefore, the stated purpose of a Workers Compensation system is to provide a fair trade-off between the interests of employees and employers. Employees are no longer required to prove negligence to gain compensation for workplace injuries.

4.6. However, employers are meant to benefit with fixed limits to liability and a quick, efficient and cost-effective system to fund these claims which provides a better outcome for employers than having to defend litigation from injured employees. It also means that the system can focus on return to work rather than financial compensation, which also benefits employers.

4.7. However, it needs to be accepted that making employers legally liable for the effects of actions of employee who may have been totally negligent themselves, or operating in direct contravention of workplace safety rules established by employers to protect their staff is, in fact, an extremely generous settlement. For example, our business will now have to pay over $60,000 in additional premiums in relation to a injury to an employee who clearly disregarded our health and safety procedures and engaged in an act which she was specifically told should not be undertaken.

4.8. Therefore, in view of the above arguments, it is perfectly reasonable that the Workers Compensation system be seen as a partnership between employers and employees and that the Government system that administers this settlement reflect this balance of interests.

4.9. In fact, our experience of Workcover NSW is that they consider themselves advocates for employees, a position which has been stated to me clearly by a number of staff with whom I have spoken. They explain without any apparent remorse that the purpose of the Scheme is to provide payments to employees and that their primary aim is to ensure that employees are protected at all times.

4.10. The staff with whom I have dealt do not consider that employers are stakeholders in the system and are hostile to employers and totally unwilling to investigate complaints and concerns raised by employers. In fact, there are virtually no internal systems that allow employer complaints to even be investigated at Workcover NSW.

4.11. Without changing the culture of Workcover NSW (and the Scheme Agents) as well as the detailed rules and procedures under which

claims are managed, no meaningful progress will ever be made. Attempts to limit the scope of the Scheme will simply result in additional actions to allow the remaining claims to expand.

5. MAJOR PROBLEMS IN THE OPERATION OF THE NSW WORKERS COMPENSATION SCHEME

5.1. As noted, there is simply not sufficient time to make a full submission on the detailed methods in which Workcover NSW allow claims costs to get out of control on a regular basis. However, the main issues that need further investigation by the Committee are as follows:

5.1.1. **Section 6:** The powers and behaviour of the Nominated Treating Doctor (NTD).

5.1.2. **Section 7:** The incentives to employers to give up claim management and give up returning employees to work as a direct result of the premium structure.

5.1.3. **Section 8:** The Rules and Guidelines established by Workcover NSW to enact the Legislation and manage the Scheme Agents.

5.1.4. **Section 9:** The lack of resources and competence from the Scheme Agents, and the incorrect incentives with which they are provided.

5.1.5. **Section 10:** The inappropriate use of Injury Management Companies and Rehabilitation Providers.

5.1.6. **Section 11:** The lack of any supervision or review of the actions of medical professionals within the Scheme.

5.1.7. **Section 12:** The lack of any proper complaints or review system for active claims.

5.1.8. **Section 13:** The unfair rules relating to premium calculation.

5.2. These matters are covered briefly below. In addition:

5.2.1. **Section 14**: Areas where the Scope of the Scheme should be reduced.

5.2.2. **Section 15**: Recommendations on all of the above areas

6. THE POWERS AND BEHAVIOUR OF THE NOMINATED TREATING DOCTORS (NTD)

6.1. In the NSW Workers Compensation system, the NTD is appointed by the employee and acts for the employee. Nonetheless, the NTD is the ONLY person who can force an employee to return to work unless the employer has the funds and time to take the matter all the way to the Workers Compensation Commission (WCC).

6.2. The power of the NTD is the number one reason why costs get out of control and any attempt to reduce the deficit must address this issue.

6.3. NTD's are not required to take into account medical opinions of Independent Medical Consultants (IMC's) or Independent Medical Experts (IME's) and frequently they will continue to certify workers unfit despite the opinions of independent specialists.

6.4. NTD's are not required to follow the diagnoses or treatment plans suggested by specialists.

6.5. NTD's are allowed to routinely exercise their powers without control or oversight. They are allowed to issue backdated medical certificates, make findings of fact without providing any justification, delay in responding to requests or holding conferences and generally make any finding that they believe is appropriate without any fear of penalty or even review from the Scheme Agents or Workcover NSW.

6.6. Scheme Agents have no power at all to question the decisions of the NTD.

6.7. There is a blatant conflict of interest between an NTD appointed by and acting for the employee and their role as sole arbiter of whether an employee can return to work.

6.8. In a recent case involving my company, an employee was certified fit by an IMC (and later by various other experts) for modified duties in August 2011 and yet her NTD refused to return her to work until he resigned in the face of overwhelming evidence of worker fitness in March 2012. There was no justification for these actions and Workcover NSW and the Scheme Agents both, as a matter of stated policy, refuse to even investigate the behaviour of the NTD. As a result, our business will pay over $40,000 over three years in respect of benefits for an employee who could have returned to work but refused to do so.

6.9. Although it may be 'politically correct' to accept that Doctors are professionals whose opinions should not be questioned, in reality it is ridiculous to assume that a Doctor who owes a duty of care to a patient and no duty whatsoever to the employer or Scheme Agent can be the sole arbiter of the status of the employee. This situation is even more indefensible when Workcover NSW absolutely refuse to ever investigate the behaviour of an NTD and prohibit Scheme Agents from doing so.

6.10. We have made recommendations to deal with this issue in Section 15 below.

7. ADVERSE INCENTIVES FOR EMPLOYERS

7.1. The premium structure of the NSW Workers Compensation system is clearly unfair. However, one of the side effects of the premium system is that it actively encourages employers to give up returning the employees to work and therefore allows employees to claim benefits indefinitely.

7.2. It is an absolute fact that when employers give up trying to return employees to work, the chances of the employees coming off benefits decline to almost zero. Chris Harrington comments that in more than 15 years, he does not remember a single case where an employee was actually successfully returned to work at a different employer.

7.3. It is our own experience that when we have discontinued active attempts to manage a case, the manner in which the case is managed by the Scheme Agents and workplace consultants becomes farcical.

7.4. The best way of reducing overall claims costs is to incentivise and empower employers to return their employees to work. In fact, despite this being the official aim, this is not how the Scheme is structured as is explained below.

7.5. Employers with Basic Tariff Premium under $10,000 and wages under $300,000 are exempt from premium increases as a result of claims experience. This is nothing but an overtly political decision which unfairly targets the medium sized business which are above the cap. However, it also means that any employer under the limit has absolutely no financial incentive to return an injured employee to work.

7.6. However, for businesses over the small business cap, the system is designed to have a similar effect. In my businesses (with a payroll of say $500,000 per property) any claim costing more than around $35,000 will cause our premium to be 'capped-out' – in our case, it doubles for three years to come (see Section 13 for details).

7.7. At the time a business hits the premium cap, the employer no longer has any further financial loss and thus no incentive to deal with the claim or return the employee to work. To illustrate how this works in practice, I refer to three real examples in our own business:

7.7.1. The injury to the worker who was certified fit by experts but allowed to refuse to work by her NTD went over the cap whilst she was still certified unfit for work. At that time, I could have simply fired her and it would have had no further effect on my premium – it would, however massively increased the claims cost. In fact, I spent a considerable amount of time and money fighting the claim simply as a matter of principle and eventually her benefits were suspended because she simply refused to attempt to return to work when we finally had her certified fit (after her initial NTD resigned). However, all the financial incentives would have been to walk away from the claim, which would have led to Workcover estimating at least FIVE YEARS of benefits for this perfectly fit employee. If you want to see why Workcover NSW is broke, it really is as simple as this.

7.7.2. We inherited a claim from a worker we never employed who was injured before we purchased a business. We were not advised about the claim by the vendor (not did we assume her employment) and by the time we found out about it, the claim was over the cap. In this case,

we simply refused to take any further action. Despite the employee being fit for modified duties since May 2011, the case was passed to a 'Rehabilitation Advisor' who simply sat on the file and did nothing, since once the employer is out of the picture nobody cares. The worker has successfully manipulated the system since this date, being generally uncooperative and failing to attend interviews without notice, all of which is permitted by Workcover NSW. A work trial was promised to commence in January 2012 but was continually delayed and as of the present date has only just commenced. I pointed out to the Rehabilitation Advisor in August 2011 that the worker was in Mudgee, which has huge staff shortages, and that almost anyone could obtain a position as a casual in, say, food and beverage. Although the worker was fit for such duties, no steps were ever taken and a worker living in a town with severe labour shortages has been able to live on benefits for over a year.

7.7.3. Our business is expected to pay premium increases of $120,000 over three years in relation to this claim; for a worker we never employed and whom we had no knowledge about who is able to claim benefits whilst fit for work. For a small business this is a disgraceful and unacceptable outcome and has led to our decision to abandon expansion plans.

7.7.4. In a second case we purchased a another business and inherited a claim from a worker who we also never employed or accepted a transfer of their employment. By the time we were advised about the claim, it was once again over the cap.

7.7.5. The Scheme Agent knew the business had been sold but never bothered to inform us as new owners about the claim. Virtually nothing was done on the claim and the worker has been living on benefits for three years. She was eventually certified fit for modified duties a year ago, but the Scheme Agent took no action at all and continued to pay benefits for six months without any attempt being made to return the worker to employment. A Rehabilitation Provider was eventually appointed (at our insistence) but no progress has been made.

7.7.6. We refused to consider returning the employee to our place of work since there was simply no financial incentive to do so and, yet again we have had to pay over $50,000 in premium increases for another worker who we have never even met.

7.7.7. We also note that this worker is in Orange, another town with a massive labour shortage where virtually anyone could get a job within a week if they were genuinely looking for work.

7.7.8. All of the above cases were referred by us to Workcover NSW for investigation. Workcover NSW apparently reviewed the files and found that all was in order. They refused to discuss our complaint with us, and two letters to the CEO of Workcover asking for a report of the findings have been ignored.

7.8. It is total hypocrisy to say that the point of the Scheme is to return employees to work, and then set up the Scheme to remove incentives from employers to actually do this. In fact, all the incentives and structure of the Scheme are aimed to allow workers who do not want to return to work to remain on benefits indefinitely.

7.9. The existence of the Workers Compensation Commission is another example of this failed thinking. By the time and small/medium business takes a case to the WCC, they will almost certainly have incurred claims costs sufficient to hit their premium cap. Since you don't get any refund on your costs even if you win, and since the WCC is totally biased in favour of employees, claims very quickly reach a stage where there is simply no point in employers fighting them or returning the employee to work. The claims costs then continue to escalate virtually uncontrolled and, as a result, the Scheme becomes insolvent.

7.10. We have made recommendations to deal with this issue in Section 15 below.

8. THE RULES AND GUIDELINES ESTABLISHED BY WORKCOVER NSW

8.1. The Legislation allows Workcover NSW and the NSW Government considerable latitude to institute rules and guidelines for the actual conduct of the Scheme.

8.2. Over the last 20 years, Workcover NSW have taken an active approach to pervert the meaning of the legislation by creating rules that fit with their ideological foundation of favouring employees.

8.3. It is primarily as a result of these rules and guidelines that employers and Scheme Agents are totally at the mercy of fraudulent and exaggerated claims. The rules instituted by Workcover make it impossible to manage claims effectively and, in the end, most employers give up in frustration as their premiums hit the cap.

8.4. A brief summary of the sorts of issues covered here include:

8.4.1. Workcover guidelines that specifically try to make it as difficult as possible for an employer to obtain an independent medical review into an employee's injury, and to delay the commissioning of such reports for as long as possible;

8.4.2. The refusal of Workcover to take any action against employees who refuse to see the employers' medical specialists, allowing this right granted by the Legislation to employers to be safely ignored;

8.4.3. Workcover rules that prohibit employers seeing virtually any of the medical evidence (even though they paid for it) on the grounds of 'privacy', even though it is totally ridiculous to assert privacy in relation to an injury for which the employer is expected to treat and compensate;

8.4.4. Workcover rules that prohibit Scheme Agents from investigating the conduct of an medical practitioners, whatever the reasons, including the failure to properly complete reports and issue opinions that matched the terms of referral;

8.4.5. Workcover rules that prohibit Scheme Agents from using any judgement in determining claim management processes, but force them to follow lengthy and inflexible processes despite the evidence and the opinions of the Scheme Agents as to the correct course of conduct;

8.4.6. Workcover guidelines that allow medical practitioners long delays in responding to questions, scheduling conferences etc, whilst continuing to pay benefits to employees during these delays;

8.4.7. Workcover guidelines that allow employees endless chances at avoiding a declaration of non-compliance, with requirements for three written warnings on each and every issue, and a restarting of the warning procedure whenever a worker temporarily complies, and generous gaps between warning, and easy ways to become compliant again even if they ever actually reach the end of the warning process (eg a worker can simply refuse to attend doctors appointments, interview etc for weeks on end, receiving benefits all the time, and then when the final warning arrives attend, and then start the process again);

8.4.8. Workcover rules (as advised to us by the Scheme Agent) that prohibit surveillance footage proving that an employee is lying about their medical condition being submitted to the employee's NTD;

8.4.9. Workcover rules that allow employees to change NTD for virtually any reason, which allows them to 'opinion shop' almost with impunity;

8.4.10. Workcover rules that allow employees to obtain backdated medical certificates, so they can attend an NTD well after their existing certificate expires but not have any interruption in benefits.

8.5. We have made recommendations to deal with this issue in Section 15 below.

9. THE LACK OF RESOURCES AND COMPETENCE FROM THE SCHEME AGENTS

9.1. Based on our joint experiences of all the different Scheme Agents, all displayed a basic lack of competence when it comes to handling claims.

9.2. We have been amazed at the total lack of resources available to Scheme Agents. Claims managers have far too many claims to manage effectively and the calibre of staff is unacceptable. The number of staff employed by the Scheme Agents is tiny compared to the claims volume.

9.3. Scheme Agents are generally terrified of Workcover. They consider that they work for Workcover, when in fact they have a legal contract with the employer.

9.4. It is a standard conversation for an employer to request an action from a Scheme Agent, the agent to agree that would be perfectly reasonable but they are not allowed to do it because of 'Workcover Guidelines'. It is the blanket excuse for almost everything.

9.5. Scheme Agents are paid a percentage of premiums, plus a bonus for performance. This would seem to suggest that they are incentivised to reduce claims costs. This is not correct.

9.6. Scheme Agents simply plan to ensure that the costs of claims management is less than the fixed payment, thereby guaranteeing a profit. The bonus is an upside, and as long as all Scheme Agents perform roughly equally badly it does not really matter. Therefore, their actual incentives are to reduce their costs and resources below

the fixed payment and not to upset Workcover, in case they lose their appointment as an Agent. They show virtually no interest in serving the interests of their actual paying clients (eg the employers) at all.

9.7. As a result Scheme Agents simply do not have the resources or motivation to manage claims effectively. In fact, they hive off most of the actual claims management work to the Injury Management Companies (see below) and hope that they can do the work for them. Supervision of these companies is usually minimal.

9.8. Bureaucracy and inefficiency is the hallmark of Scheme Agents. It will take them days or weeks to take actions that should be undertaken as a matter of course. There is no sense of urgency or understanding of the cost that the delays have for employers. They simply follow the processes set out by Workcover without commitment or any real incentive to perform, knowing that Workcover will always back them if they favour the employees and that there is no process to investigate their conduct.

9.9. Individual Scheme Agent workers are scared of Workcover audits and therefore, attempting to keep their masters happy, almost always take the employees side of the matter as they think this is what Workcover want.

9.10. There is no possibility of the NSW Workers Compensation Scheme being efficiently and fairly administered by the current Scheme Agent system. Incentives, rules and reporting lines will need to be changed.

9.11. We have made recommendations to deal with this issue in Section 15 below.

10. THE INAPPROPRIATE USE OF INJURY MANAGEMENT COMPANIES AND REHABILITATION PROVIDERS

10.1. The first action in almost all Workers Compensation matters when a worker is certified by the NTD as unfit or partially unfit is for the Scheme Agent to appoint an Injury Management Company.

10.2. The main reason for this is resources and costs, not claim management.

10.3. Scheme Agents do not have the staff to manage claims and in any event, their staff costs come out of their profit. Injury Management Companies are paid as costs of the claim. Therefore, the Scheme Agents basically outsource the claims management so that they do not have to pay for it themselves.

10.4. Injury Management Companies are meant to facilitate the return to work of the employee. In fact, they are almost totally useless. Chris Harrington refuses to allow Injury Management Companies to take anything other than an occasional minor specified role on any claim he is handling as their influence is almost always negative.

10.5. The usual role of an Injury Management Company, to create a return to work plan based on the medical restrictions, can just as easily be performed by the employer. However, Scheme Agents never tell the employer that they can do this themselves, as the Scheme Agents want the Injury Management Company in place so they do not need to do any work supervising the claim.

10.6. Injury Management Companies get paid for their time. Their incentive is to extend the case as long as possible.

10.7. Generally, staff at Injury Management Companies have no genuine claims management experience. Their role consists of drafting expensive and pointless reports that do virtually nothing but add costs to the claim.

10.8. Injury Management Companies are very employee focussed and attempt to ensure that all parties have agreed on everything. If all parties did agree, there is no real role for them. If the parties do not agree, Injury Management Companies have no ability to resolve the deadlock and simply allow the claim to drift on.

10.9. The critical problem is that Scheme Agents do not really bother dealing direct with the NTD – they let the Injury Management Company do this as they are selected because they have staff near the workplace. However, Injury Management Companies are performing a role which needs to be the responsibility of the Scheme Agents – that is, getting the employee back to work. As a result, Scheme Agents usually do not know what is actually going on with the case and take a totally reactive approach, not even bothering to follow up until they are asked to do so. In the vast majority of circumstances I have found that the Scheme Agent's case manager is not up to date on the case and constantly needs to be fed information by the employer just so they know what is going on at any time.

10.10. Injury Management Companies have limited medical skills and therefore are not in a position to challenge NTDs on return to work. Therefore, they accept whatever the NTD says – this makes it very easy for NTDs to continue to provide unfit certificates as the Scheme

Agents are basically not involved and the Injury Management Company gets paid for showing up and writing a report about the meeting.

10.11. Injury Management Companies are appointed by Scheme Agents, but of course the cost falls to the employer. However, they do not consider the employer the client and the employer has no contract with them – therefore, the employer has even less influence with an Injury Management Company than the Scheme Agent.

10.12. Outplacement of injured workers by Injury Management Companies, as noted in the examples above, is little short of a joke. If you cannot get a worker in either Orange or Mudgee a job in about a week then there is simply no point pretending that this approach is worth continuing. We have a case in each town where the Injury Management Company has not managed to get a fit worker to do any real work in over a year.

10.13. In one of our actual cases, the Injury Management Company was unable to obtain an upgrade to suitable duties from the NTD for 9 months. Once they had been removed from the case and we had hired our own consultant doctor (through Chris Harrington) who liaised direct with the new NTD, the worker was certified fit within three weeks. And then refused to return to work anyway.

10.14. The ONLY role for such a provider should be when there is a specialist issue relating to the treatment of an injury that requires genuine expertise or equipment eg advice on worksite ergonomics. At present, they are appointed to virtually all cases simply because it is part of the Workcover guidelines and because it allows Scheme Agents not to have to staff their operations properly.

10.15. We have made recommendations to deal with this issue in Section 15 below.

11. THE LACK OF ANY SUPERVISION OR REVIEW OF THE ACTIONS OF MEDICAL PROFESSIONALS WITHIN THE SCHEME

11.1. The whole Workers Compensation Scheme relies on impartial, quality advice being provided by medical professionals.

11.2. However, there are absolutely no procedures for reviewing or monitoring the behaviour of medical professionals. In fact, Workcover NSW have made it quite clear to all parties that they will never investigate or even review the behaviour of doctors, or allow their Scheme Agents to do so.

11.3. Therefore, if employers feel that they have been adversely affected by the actions of doctors, their only option is to take direct legal action themselves.

11.4. This is a totally inequitable situation – employers completely fund the Workcover NSW Scheme. It stands to reason that there should be adequate provision for the monitoring, and if necessary, exclusion of doctors within the Scheme.

11.5. Expecting external professional bodies (such as the Healthcare Complaints Commission) to perform this role is unrealistic. Workcover NSW and the medical professional bodies have long had an understanding that Workcover NSW will not investigate doctors and in return doctors know that they can favour their own clients (eg the employees) without fear of action. In fact, the HCC is totally disinterested in investigating Workcover related matters since there is no pressure from the NSW Government to do so.

11.6. As a matter of policy, if a Government Scheme relies heavily on the professional conduct of doctors, it is necessary that the same Scheme should contain rules and bodies for monitoring their conduct. Expecting external review bodies to perform this role is inappropriate.

11.7. It is incredible – but true – that neither Workcover NSW nor any of the Scheme Agents ever employ doctors to review Workers Compensation cases. In our view, this is deliberate. It allows them to accept doctors' opinions without question knowing that doctors are far more likely to be sympathetic to their own patients than the interests of employers.

11.8. It is quite impossible to run a proper, balanced claims management procedure without the Scheme Agents having access to their own medical expertise who can then advise them which cases need closer investigation based on the facts.

11.9. In fact, the Workcover Scheme seeks to avoid this at all costs. The Scheme runs on the basis that Scheme Agents are NOT allowed to actually form their own opinions and act accordingly – they are there to follow Workcover guidelines, not to intelligently manage the claim to reduce the costs as much as possible.

11.10. The lack of medical expertise available to the Scheme Agents means that they are totally unable to deal with external medical professional and opinions. Therefore, they simply accept them without analysis on the grounds that they have no expertise or role in considering them. This simply leads to delay and paralysis.

11.11. To provide an example – in one of our cases, the Scheme Agent decided to obtain an Independent Medical Consultant (IMC) opinion on the matter and the fitness of the employee to return to work. However,

lacking any medical expertise the terms of reference provided to the IMC were completely amateurish, and lacked a proper timeline, proper explanation of the issues at stake, full documentation and failed to ask the correct questions to address the issues at stake. The IMC himself simply met with the patient and transcribed her entire statement into his report, accepting it without question, without providing any analysis of the claims made, without checking any of the facts, without providing any detailed medical analysis or diagnosis at all and failed to answer in any meaningful sense any of the questions that were actually posed by the Scheme Agent. On receipt of this report, which was completely unprofessional as well as being incomplete, the Scheme Agent immediately paid the IMC and put the report in file without asking any questions or, even, insisting that the IMC actually answer the questions set out in the brief. When the Scheme Agent was challenged on their behaviour and advised that their conduct of the IMC was negligent, as usual they simply stated that they had followed Workcover guidelines and that was all that they were obliged to do, and that any complaint about the conduct of the doctor was outside of their scope. This single episode consumed 4 weeks of time (during which the worker continued to receive benefits for not working), over $1k in IMC fees and did not in any way advance the case. When pressed, the Scheme Agent suggested that the appropriate course of action was to write a letter to the IMC requesting that he answer some of the questions properly. It took a week to even persuade the Scheme Agent to take this action; the letter would take a week to write and send, and the IMC was allowed two

weeks to respond before the Scheme Agent could take any further action. Apparently the idea that the Scheme Agent should read a report before paying for it and then phone the doctor to discuss the omissions is outside of Workcover guidelines.

11.12. It is a well known reality that there is a class of doctors who make a living out of Workers Compensation claims. They can do this safe in the knowledge that, as long as they prefer the worker whenever possible, they will get paid for their work without delay, they will never be called out on unprofessional or rushed work and that nobody will ever investigate what they have done, unless some brave employer is prepared to risk bankruptcy pursuing them in the Courts. In these circumstances, there is never going to be a genuine focus on results and fairness and claims costs will continue to escalate.

11.13. We have made recommendations to deal with this issue in Section 15 below.

12. THE LACK OF ANY PROPER COMPLAINTS OR REVIEW SYSTEM FOR ACTIVE CLAIMS

12.1. Putting it bluntly, Workcover NSW are not remotely interested in complaints from employers.

12.2. The Complaints Assistance Service, the main contact point in Workcover, will not investigate the actual management of any claim. As long as the claim is being handled in line with 'procedure', as a matter of policy they will not take any action however poorly the claim is being managed.

12.3. There is no other procedure for making complaints against the management of claims. This is not a surprise – the Scheme Agents are legally agents of Workcover. To investigate negligence of Scheme Agents is asking Workcover to investigate itself.

12.4. After multiple attempts, I did find a unit in Workcover NSW responsible for monitoring the Scheme Agents. They would not speak to me. They called for a file review without any briefing as to the nature of the complaint. They performed the review (apparently) and then refused to provide any feedback or report on the complaint. Two follow up letters to the CEO of Workcover were ignored.

12.5. I attempted to make a claim that my premiums should be reduced because the Scheme Agents were negligent by delaying the handling of the claim and that therefore I should not have to pay the weekly benefits for the periods where the Scheme Agents had failed to act. I was told by Workcover that there was no process to consider such complaints.

12.6. I was advised that I could lodge an appeal against my premium calculation. However, I could only do this after the premium year finished, and there was at least a six months wait before they would reply (eg over a year from the date of the complaint). I was also told that the appeals panel rejects virtually all premium appeals and that the grounds that I had stated were not grounds for an appeal, since the appeals panel only considers mistakes in the calculation, not the way the claims were handled.

12.7. Therefore, if a Scheme Agent is negligent and/or incompetent, there is NO process within the Workers Compensation system for any investigation or action or appeal over the costs to be heard.

12.8. This approach is completely unacceptable and, in all likelihood, legally indefensible. It is, however, further evidence of the attitude of Workcover NSW and their total lack of accountability to the people who fund the Scheme.

12.9. We have made recommendations to deal with this issue in Section 15 below.

13. THE UNFAIR RULES RELATING TO PREMIUM CALCULATION

13.1. There are numerous practices in relation to the premium calculation process which are at best immoral and at worst fraudulent, if they had not been permitted by the NSW Parliament. These include:

13.1.1. The Predecessor Rule. Whereby people buying a business become fully liable for any claims that occurred in the past three years, whether they ever agreed to employ the affected worker or not. This applies whether the new owner even knew about the claim and, of course, completely ignores the obvious fact that the new owner often never had the opportunity to return the worker to work even if they wanted to.

13.1.1.1. This rule is sometimes defended on the basis that it is not unusual for past events to be included in future insurance premiums. This is a false argument. The Workers Compensation Scheme is NOT an insurance Scheme. The costs that are being passed on to the new owner are ALL of the ACTUAL costs of the injury, multiplied as ever by the usual mark-up so that the new owner usually pays a multiple of the actual claims costs despite never having anything to do with the claim. This is not the same as a general increase in an insurance premium as a result of past event. It is simply about extorting money from the new owner for something that was nothing to do with them.

13.1.2. The Wages to Claims Cost basis. The premium formula compares the actual claims costs to total wages (not for the group, of course, just the individual company – grouping is a one way street). For all small

business with a Basic Tariff Premium over $10,000 and wages over $300,000 this can cause the premium to hit the cap with very small claims, because the claims cost to wages ratio is very high. As a result, the Scheme is heavily biased against small/medium businesses – the same businesses that are meant to provide most of the growth in the economy. As noted before, in the case of our business, one claim with a value of $38,000 (mainly due to Scheme Agent negligence) will cause our premium to hit the cap, and as we are part of a small group this nearly doubles our premium for three years. This causes premiums to go up by over $65,000 over that period – therefore, for each dollar spent on the claim, we pay close to double. This situation is almost universal for small/medium businesses. Due to the formula, we are artificially penalised for claims and hit the cap very quickly, so we have far less interest in fighting claims – resulting in a huge number of people on benefits long term once their claim gets forgotten.

13.1.3. Fraudulent Claims Estimates. Amazingly, Workcover are allowed to GUESS what the future claims costs will be and add these made up costs to your premium calculation. If it turns out they were wrong, they get to keep the money! It is fraud in any other context. The vast majority of claims costs estimates are made up of these fake estimates. The fact that Workcover find it appropriate to accrue 12 months of weekly benefits for an employee who has been off work for 3 months speaks volumes for their claims handling abilities.

13.1.3.1. The problem of claims estimates is fundamental to the system. The fact that, for example, Workcover and the Scheme Agents are

ALLOWED to charge the claim with 12 months of wages after 3 months simply allows them to drag their feet and fail to return the employee to work – it sets a totally unacceptable expectation of the final outcome. They are being provided with an excuse to fail by being able to charge the employer in advance for an assumed failure.

13.1.4. Fraudulent Declined Claims costs. Even more amazingly, if you accomplish the almost impossible and get a claim declined, Workcover increase your premium anyway – on the grounds that they might accept the claim later. If they don't, they keep the money. This is simply a corrupt method for trying to stop employers getting claims declined – it is actually often cheaper to instruct your Scheme Agent to accept a fraudulent claim than get it declined. This policy lays bare Workcover's true intentions.

13.1.5. The small business cap of $10,000 Basic Tariff Premium and $300,000 wages. This is politics at its worst – a simple admission that if millions of very small business owners had to deal with Workers Compensation claims and the premium increases that result there would be a revolution. Excluding them from the affects of the Scheme just transfers the load to other small businesses that do not fit under the cap. If you believe the system is fair it should be applied to everyone. If it is not fair, change it.

13.1.6. The Grouping system. It has NO other purpose but to raise more money by allowing larger premium increases by increasing the cap. With base wages of over $1m across a group, the cap rises to 2 times the base premium for three years – a hugely onerous situation. There

is frankly absolutely no logical reason why companies in a group should have a higher premium cap, other than the fact that there are a smaller number of these businesses so it is politically easier to penalise them unfairly (see 13.1.5).

13.2. None of these rules is remotely defensible on grounds of fairness. It is simply about one thing – Workcover NSW trying to get as much money out of businesses as possible. They are a massive dis-incentive to economic growth and, in particular, penalise small/medium business who are not large enough to spend large amounts of money defending themselves against Workcover.

13.3. We have made recommendations to deal with this issue in Section 15 below.

14. CHANGES IN SCOPE OF NSW WORKERS COMPENSATION SCHEME

14.1. The Issues Paper seems to focus on reducing the scope of benefits. In our view, this is deliberately leading the Government into a political minefield.

14.2. However, there are two basic changes that, in all likelihood, would not be particularly controversial to the public at large, although obviously the 'Compensation Industry' will object.

14.3. Firstly, as the Issues Paper suggests, Journey Claims should be removed from the Scheme. It is already accepted that these claims cannot be held at the door of the employer and therefore they are excluded from the premium calculation. However, there is no logical justification for an employer being liable for something that happens outside of their workplace and therefore it has no place in a Workers Compensation Scheme.

14.4. Secondly, ALL psychological claims and other mental health claims should be excluded from the Workers Compensation Scheme.

14.5. It is the purpose of the Scheme to provide for genuine injuries incurred at work. It is virtually impossible to properly assess a psychological injury, nor is it possible to determine whether it was genuinely work-related. These claims are just totally used to abuse the system.

14.6. Psychological claims are now used continually by the 'Compensation Industry' to improperly extend claims that were failing on their genuine grounds. In our case, when the injured worker was close to finally being certified fit for work, she simply manufactured a psychological injury and her NTD immediately accepted it and provided

another unfit certificate. The Scheme Agent stated that if the claim was lodged they would accept it without question (even though they were well aware of the actual situation) and the claim process would start all over again.

14.7. It is perfectly reasonable to make the case to the public at large that the Workers Compensation Scheme is there to deal with physical injuries only and that any claims for psychological injury must prove employer negligence.

14.8. It is worth remembering that Common Law provisions would still apply to psychological injury if it was excluded from the Scheme. This is the proper approach – if claims like this are made, the requirement to provide negligence on behalf of the employer is perfectly reasonable. It is totally unreasonable to expect employers to somehow be able to assess the ongoing psychological health of their workers when they clearly have no skills and ability to do so, and to make them liable for people who may have had existing (and undisclosed) psychological issues which they can then claim were 'exacerbated' at work.

14.9. Removing psychological claims would probably not be particularly controversial and would go a long way to putting the Scheme back on an even footing.

15. RECOMMENDATIONS

15.1. Clearly, there are a number of complex issues at stake which need further examination. However, the fact is that the deficit in the NSW Workers Compensation Scheme could be eliminated entirely, and without the need for major benefit cuts, by dealing with the issues noted above.

15.2. Below we have suggested some outline specific proposals to address the issues raised.

15.3. NTD's

15.4. The use of IMC's should be discontinued as a method of case management.

15.5. Employers should be offered the option of having an IMC represent them to liaise with the NTD on treatment and return to work options (see Section 16)

15.6. AT ANY TIME the employer may refer a case to an IME. If the IME substantially agrees with the existing medical information and opinion of the NTD, the employer should be required to reimburse half the cost of the IME report directly to the Scheme (eg outside of the premium). This creates a fair balance between giving employers the right to a quick, specialist review and the cost associated with spurious referrals.

15.7. Employers should always have the right to brief the IME directly and make submissions for consideration.

15.8. The opinion of an IME should ALWAYS over-rule the opinion of the NTD in relation for fitness for work or modified duties.

15.9. If the NTD or worker refuses to accept the diagnosis and medical treatment suggested by an IME the Scheme Agent should have the power to suspend benefits, with the matter to be referred to the WCC for a decision.

15.10. NTD's should not be able to issue backdated certificates, unless the NTD certifies that they were physically unable to see the patient before the previous certificate was due to expire. This should entail a special certification by the NTD that there were specific factors that meant that the patient could not have been examined at ANY earlier time. Scheme Agents should be required to enquire into all such cases and should have the power to reject backdated certificates if it becomes clear that they have been used without full justification.

15.11. Employer's incentives

15.12. The premium structure for small/medium businesses needs to be completely re-worked to avoid them hitting the premium cap so quickly and thus abandoning claims.

15.13. If this cannot be done, a special rebate should be available for employers who return an employee to work AFTER the premium has hit the cap – I would suggest a 25% reduction in total premium for the period that the employee returns to work as long as an experience premium is still payable in this case.

15.14. Employers restrictions on the type of modified duties that they are able to offer should be loosened as the key aim should be to return the

employee to work on any viable basis.

15.15. Rules and Guidelines

15.16. ALL Workcover Rules and Guidelines need to be reviewed by an independent body.

15.17. In future, responsibility to drafting and proposing rules and guidelines should be removed from Workcover NSW and passed to the Ministry of Finance. Workcover Guidelines have been the main mechanism via which Workcover has been able to blow out its deficit.

15.18. The specific matters raised in Section 8 need to be modified.

15.19. Generally, Scheme Agents need to have far more power to judge and take actions in relation to claims. This would imply a Quick Review Body be established, separate from the WCC, for which administrative decisions (such as withdrawal of benefits) could be referred on an immediate ruling basis (eg no more than a 7 day turnaround). The WCC would still form the supreme decision making body, but for day to day case management issues there needs to be a body (other than Workcover) than can review the actions of Scheme Agents and grant them authority to manage the case properly and fairly.

15.20. Lack of Resources and Competence of Scheme Agents

15.21. If the Scheme is to be managed properly, the financial incentives of Scheme Agents and their monitoring needs to be changed.

15.22. Scheme Agents need to be paid more to manage claims, and in return they should not be engaging Injury Management Companies. There is

likely to be no net cost to the Scheme since Injury Management Companies are hugely expensive.

15.23. No guaranteed profit should be available to Scheme Agents. To make a profit, they will need to achieve performance standards. Obviously, they will not be prepared to commit to this unless they actually have the ability to manage the claims properly, free from Workcover's endless guidelines.

15.24. A case to manager ratio needs to be established that is significantly better than at present.

15.25. Audits of Scheme Agents need to be undertaken regularly – not based on adherence to Workcover Guidelines (as at present) but on the grounds of competence and performance.

15.26. Scheme Agents should be required to refer cases that have not been resolved after (say 4) months to a specialist unit within their organisation.

15.27. Injury Management Companies

15.28. Injury Management Companies should not be appointed by Scheme Agents at the beginning of a case.

15.29. Injury Management Companies should only be appointed with the agreement of the employer and employee after each party has been briefed in detail as to the role of this party and the employer is offered the opportunity to take over this role themselves.

15.30. Scheme Agents should be able to appoint an Injury Management Company only when it is clear that the employer is not able to manage the return to work process on their own, or when there are specialist

technical skills required for return to work or rehabilitation that nobody can provide.

15.31. Injury Management Companies should NOT be representing the Scheme Agents in case management conferences and a representative of the Scheme Agent must attend EVERY case management conference either in person or via teleconference.

15.32. Outplacement of employees in a different workplace needs significant attention, as the current practice is completely unsuccessful.

15.33. Procedures governing behaviour by employees need to be tightened. Employees should be required to co-operate fully and AT ALL TIMES with the re-placement program. ALL instances of non-cooperation should attract immediate fixed reductions in benefits and a permanent 'three strikes' policy instituted that causes employees to be forced to leave the Scheme permanently after three formal warnings, regardless of whether the warnings are for connected or different behaviours.

15.34. Employers should only have to pay for employees who are fully, actively and enthusiastically seeking work. Unfortunately, it is so easy to play the system in this respect that many employees can stay off work indefinitely.

15.35. Fees structure for outplacement providers need review – a fixed base fee with a large success element should be implemented. Currently, most of these companies are paid for their time, which means they have no real incentive to cut short any case.

15.36. Review of Medical Professionals

15.37. A statutory body, independent of Workcover NSW, needs to be established to monitor the behaviour and conduct of medical professionals within the Scheme.

15.38. The Body will be tasked with reviewing the behaviour of doctors, not reviewing their medical opinions. However, if they believe that a doctors medical opinion in a case may be compromised they can empower the Scheme Agent to obtain a second opinion.

15.39. Records of all registered doctors should be kept and monitored and an audit team created to monitor doctors who appear to be abusing the Scheme.

15.40. Any stakeholder (employee/employer/Scheme Agent) can refer a case to the Body at any time for a review of medical practitioners behaviour. For employers and employees, a fee should be charged to reduce spurious complaints, refundable if the complaint is supported.

15.41. Complaints need to be heard quickly to allow decisions to be taken in active cases.

15.42. The Body can direct medical professionals to take remedial action (for example, if reports are not completed properly, or appointments are delayed) and refund fees received if necessary.

15.43. The Body will have the right to suspend, limit or terminate any medical professional's participation in the Workers Compensation Scheme. This includes the ability to insist that an NTD cease to act immediately and that the employee find a new NTD.

15.44. The Body can refer matters to the Healthcare Complaints Commission for further sanction, but the Body will have FULL authority to determine whether medical practitioners can continue to work within

the Scheme and on what basis.

15.45. Complaint and Review System

15.46. A Workcover Ombudsman needs to be created.

15.47. The Ombudsman should have the power to review any matter relating to the handling of a claim, and, if necessary, penalise the Scheme Agent and/or make restitution to the employer.

15.48. It is critical that the terms of reference of the Ombudsman should include the competence and timeliness within which a claim has been handled, rather than a simple review of procedure. It is the current practice of Workcover NSW and Scheme Agents hiding behind procedure that has caused the current problems in the system.

15.49. Once again, complaints to the Ombudsman should attract a fee, refundable if the Ombudsman finds in favour of the complainant.

15.50. The existing NSW Ombudsman is not in a position to fulfil this role.

15.51. Workcover need to establish proper complaint investigation and handling procedures subject to review by the Ombudsman.

15.52. Workcover need to establish a Fitness for Work Directorate (FWD).

15.53. This body, comprised of medical professionals, should be able to review any case where the employee has been certified unfit for work for more than 3 months, or is certified for modified duties for less than 20 hours per week after 4 months.

15.54. The FWD will physically examine patients and discuss the case with the NTD and IME (if one has been used). The FWD can then make binding determinations of fitness to work and/or the scope of modified duties.

15.55. The FWD will re-examine the case every 2 months thereafter.

15.56. As always, FWD decisions can be appealed to the WCC.

15.57. Premium Calculations

15.58. The Predecessor Rule should be abolished. If necessary, those selling a business with an active claim should continue to be responsible for the experience premium after the business is sold for up to 3 years.

15.59. The Declined claims costs should be abolished.

15.60. Employers should be granted a FULL refund in respect of ANY amount of an experience premium paid based on a claims estimate which turns out to over-estimate the actual cost of dealing with a claim.

15.61. Grouping should be abolished as it has no purpose. All companies should operate on a 1.75 times base premium cap.

15.62. The small business exemption should be removed.

15.63. The premiums formula should be reviewed to ensure that the claims cost to wages ratio is significantly modified to stop the situation of small/medium businesses being 'capped out' with relatively small claims. In principle, a premium should only reach the premium cap once the total claims costs have hit the 'claim limit' of $150,000. Otherwise, this protective cap is pointless for the vast majority of businesses since their premiums are capped out on claims far smaller than this 'claim limit'.

15.64. As noted above, a rebate should apply for a successful return to work after a premium cap has been reached.

15.65. To aid outplacement of workers, employers should get a generous premium rebate if they agree to take on a worker who is being

outplaced under the Scheme and the employer must be granted a 3 year immunity from any future claims costs that relate to this employee – at present no employer wants to take a Workers Compensation outplacement because if the employee is re-injured they will be liable.

15.66. Use of employer IMC's

15.67. The Legislation grants the right to employers to have their own doctors examine the patient.

15.68. This right is undermined by Workcover, who will take no action against an employee who failed to report for examination. In any event, the Scheme Agents and Workcover take no account of employer doctors opinions.

15.69. Generally, Workcover seems to take the view that although the employees have a doctor (the NTD) all other doctors should be independent. I understand they do not like the idea of 'employer' doctors because it would make the system confrontational.

15.70. However, in fact, this needs to be re-examined on the basis of the experience of Chris Harrington. In his cases, he used an IMC to act for the employer. The ONLY role of this IMC is to discuss and agree a return to work plan with the NTD.

15.71. In fact, rather than being confrontational, this system works far better than expecting the employer/Scheme Agent/Injury Management Company to liaise with the IMC.

15.72. Generally, NTDs see the Scheme Agents as acting for a remote government body and Injury Management Companies as unqualified to

comment on medical matters. Employers find it hard to press their case with NTDs as it does become confrontational if the employer is pressing for an upgrade, since the NTD wants to protect his patient (and probably his "business" which is subject to influence by his patient).

15.73. However, if an employer engaged IMC speaks to the NTD about return to work, the actual experience is that this works far, far better. It becomes a non-confrontational 'doctor-to-doctor' discussion. In any event, the NTD knows there is another doctor reviewing what is happening and therefore tends to be more willing to reach an agreement for return to work.

15.74. In the hundreds of cases that Mr Harrington has managed, the 'doctor-to-doctor' approach has produced superb return to work results especially when there was initial difficulty with the NTD.

15.75. Workcover claim that the current IMC approach replicates this, since the IMC liaises with the NTD on return to work. This is not the reality. Since the IMC does not really work for anyone (eg they just get paid by the Scheme Agent), they are not committed to the process after they have submitted their initial report. Scheme Agents will not push IMCs to push NTDs as this is not how the 'Guidelines' suggest the process should work. Therefore, at present, IMCs are an impediment to the process.

15.76. Instead of Scheme Agents appointing Injury Management Companies and IMCs, it would be a far better use of resources for the Scheme Agent to allow the employer to engage an IMC (from an approved list supplied by the Scheme Agent) which is paid for from the Scheme. The

employer IMC would ONLY be engaged to deal with return to work fitness and processes – all medical issues should be referred to IME's. With the employer IMC liaising with the NTD there is a far better chance of getting a quick agreement on return to work than if a totally unqualified Injury Management adviser, or totally disinterested Scheme Agent, try to achieve the same thing.

15.77. I strongly suggest the Committee take verbal evidence from Mr Chris Harrington, and some of the Scheme Agents with which he has worked, on the effectiveness of this approach.

15.78. Other matters

15.79. The fundamental issue at present is the culture of Workcover NSW and, indirectly, that of the Scheme Agents. The primary reason why benefit cuts will not translate into better financial performance is that Workcover NSW has a culture of believing that employees are entitled to any benefits and that Workcover exists to support this belief.

15.80. The governing Board of Workcover NSW needs to be a mix of employee representatives, medical practitioners and employer representatives, together with financial analysts.

15.81. In addition, the composition of the Workers Compensation Commission needs urgent review. This body has become similar to an Industrial Tribunal, with an inbuilt bias in favour of employees which leads most advisers to tell employers not to even bother. A balanced body with streamlined procedures is needed, and the WCC needs to refund costs to employers if they are successful (eg reduce the claims costs retrospectively to make the premium outcome equitable for the

employer).

16. CONCLUSION

16.1. The Workers Compensation system in NSW needs urgent reform and we are pleased to see that the Government is taking these urgent efforts.

16.2. However, there needs to be a clear understanding that every aspect of the procedures, rules and guidelines need to be reviewed and improved to provide a fair balance between employers and employees.

16.3. We are very concerned that the Issues Paper focuses on benefit cuts as we suspect they will be politically undeliverable and, in all probability, will not actually improve the financial performance of the Scheme.

16.4. The Culture of the entire system is a major barrier to change. Other than leadership changes, we have recommended that various bodies independent of Workcover be established precisely for this reason – Workcover are so biased that they cannot be trusted with the administration and review of the whole system.

16.5. For many years Workcover have quite deliberately manipulated the rules and procedures of the system and skewed the incentives of the parties to achieve their overall aims. Actions that claims to support one objective (eg paying Scheme Agents bonuses based on return to work performance) are then systematically undermined (by hugely restrictive claims guidelines and audit behaviour) to achieve the opposite outcome.

16.6. Any improvements to the NSW Workers Compensation system needs to focus on the DETAILS, not the overall policy. Unless the day-to-day

failures of the system are addressed, the financial performance will continue to deteriorate.

INIGMA

HIGH LEVEL WORKERS COMPENSATION SOLUTIONS

14 May 2012

The Director
Joint Select Committee on the NSW Compensation Scheme
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Sir,

Submission to Committee

I refer to the Submission prepared by Ryan Shaw, Principal, Mandala Asset Solutions Pty Ltd.

This submission makes reference to my work through Inigma Group Pty Ltd.

Inigma Group Pty Ltd is a specialist consulting firm that guides its clients in taking ownership of workers compensation, concentrating on the return to work process through application of best practice processes working, at all times, with legislation.

I am writing to provide my support and endorsement of Ryan Shaw's comments and recommendations which are based on his personal experience with the WorkCover system. I believe Ryan Shaw's submission is very well considered, fully justified and deserves serious consideration.

We thoroughly back Ryan Shaw's comments regarding the nominated treating doctor (NTD). We believe most of WorkCover's current problems are derived from the unfetted freedom of NTDs allowing them to carry out their role whichever way they choose. Amazingly, NTDs are, in practice, free of scrutiny and never have to face proper audits by WorkCover or any other statutory body. This has resulted in many NTDs abusing the system with impunity.

I would welcome the opportunity to make a verbal submission to the Committee along with Ryan Shaw.

Yours sincerely

Chris Harrington
Director

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